

## **EXHIBIT 4**

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN FRANCISCO DIVISION

4 ---000---

5 MEGAN KELLY,

6 Plaintiff,

7 vs.

No. C-07-3002 MML

8 APPLERA CORPORATION,

(EMC)

9 Defendants.  
10 \_\_\_\_\_/

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13  
14 DEPOSITION OF JONATHAN LAOSIRI

15  
16  
17  
18  
19 Taken before CAROL SCHILP

20 CSR No. 9648

21 April 8, 2008



One Kaiser Plaza, Suite 505  
Oakland, California 94612  
510/451-1580 Fax 510/451-3797

Certified Shorthand Reporters

1 A. I don't remember.

2 Q. Did you receive any training about sexual  
3 harassment at any other companies you've worked for  
4 since university?

5 A. Yes.

10:25

6 Q. What's the last sexual harassment training  
7 you've had?

8 A. At Affymetrix.

9 Q. Do you have an understanding of what the  
10 term reasonable accommodation means?

10:25

11 A. Yes.

12 Q. What's your understanding of what that  
13 term means?

14 A. Well --

15 MR. PAETKAU: Objection to the extent it  
16 calls for a legal conclusion.

10:25

17 You can answer if you understand.

18 THE WITNESS: A reasonable accommodation  
19 is, if I have a job that I could provide to someone  
20 that -- you know, that could be comfortable at a  
21 job, then I could -- then I will, you know, find a  
22 job for them. If they can't stand for too long, I  
23 would make accommodation that they could sit down  
24 maybe five minute or ten minute, whatever is  
25 required.

10:26

10:26

1 BY MS. McFADDEN:

2 Q. And you've just given me your  
3 understanding of what the term reasonable  
4 accommodation means.

5 Where did you get that understanding from, 10:26  
6 that that's what it means?

7 A. Just from my experience.

8 Q. Do you have an understanding of what the  
9 term interactive process means?

10 A. No. 10:26

11 Q. Have you ever heard the term interactive  
12 process before?

13 A. No.

14 Q. Do you have an understanding of what the  
15 phrase essential functions of a job means? 10:27

16 MR. PAETKAU: Objection. Vague and  
17 ambiguous; lacks foundation; and to the extent it  
18 calls for a legal conclusion.

19 You can answer if you understand it.

20 THE WITNESS: Can you rephrase that? 10:27

21 BY MS. McFADDEN:

22 Q. Have you ever heard the term essential  
23 functions of a job?

24 A. Yes.

25 Q. Okay. Do you have an understanding of 10:27

1 what that means?

2 A. Yes.

3 Q. What's your understanding?

4 A. It's what is required to do a job.

5 Q. And where did you get your understanding 10:27  
6 that that's what essential functions means?

7 A. From experience.

8 Q. Do you have an understanding of the  
9 process -- strike that.

10 I want to focus on the time period of 10:27  
11 January 2006. So while you were production  
12 manager, that time frame.

13 During that time frame, do you have an  
14 understanding of what process Applera Corporation  
15 used to determine reasonable accommodations for 10:28  
16 employees with disabilities?

17 MR. PAETKAU: I want to object to that as  
18 lacking foundation; also to the extent it calls for  
19 legal conclusions.

20 You can answer it if you understand. 10:28

21 THE WITNESS: Could you question that --  
22 say the question again?

23 BY MS. McFADDEN:

24 Q. Sure. Let me try to ask that again.

25 During the last six months while you were 10:28

1 Q. Okay. While Ms. Kelly was out on the  
2 leave of absence for the first injury to her ankle,  
3 did you have any communications at all with her?

4 A. Don't remember.

5 Q. Okay. Did you have any communications 10:58  
6 with Ms. Kelly specifically about her return to  
7 work after the initial leave of absence for the  
8 original injury?

9 A. No.

10 Q. Okay. When Ms. Kelly returned to work at 10:59  
11 Applera after the first leave of absence for the  
12 original injury, did she give you a doctor's note?

13 A. No.

14 Q. To your knowledge, when Ms. Kelly returned  
15 to work at Applera after the first leave of absence 10:59  
16 for the original injury to her ankle, did she have  
17 any work restrictions?

18 A. I don't remember.

19 Q. Now, let me see if I can jog your memory  
20 at all. 11:00

21 Have you ever -- any recollection of ever  
22 hearing that when she returned to work after the  
23 original injury, she needed to take breaks more  
24 frequently than employees normally would?

25 A. No. 11:00

1 Q. Okay. Ever hear anything or recall  
2 hearing anything along the lines that she needed to  
3 sit down more often than employees normally would?

4 A. No.

5 Q. Okay. And so when you say "no," I want to 11:00  
6 make sure, are you certain you never heard anything  
7 like that, or you're just not recalling?

8 MR. PAETKAU: Objection. Asked and  
9 answered.

10 THE WITNESS: I can't recall. 11:01

11 BY MS. McFADDEN:

12 Q. Okay. So if Ms. Kelly had come to you and  
13 told you that she had work restrictions in terms  
14 of -- well, any work restrictions, but with regard  
15 to taking breaks or needing to sit down, would you 11:01  
16 have documented that?

17 MR. PAETKAU: Objection. Incomplete  
18 hypothetical; lacks foundation.

19 THE WITNESS: Yes.

20 BY MS. McFADDEN: 11:01

21 Q. Okay. How would you have documented that?

22 A. On email to myself.

23 Q. So an email from yourself to yourself?

24 A. Yes.

25 Q. What would be the purpose of the email 11:01

1 from yourself --

2 A. Well, not -- also to the lead.

3 Q. To who?

4 A. The lead.

5 Q. Who was the lead?

11:01

6 A. The people that also help me oversee the  
7 production operation.

8 Q. Okay. So during the 2004, 2005 time  
9 frame, who were the leads?

10 A. I don't remember. I can't recall. So  
11 many.

11:02

12 Q. Well, how many leads were there at one  
13 time?

14 A. Six.

15 Q. So just to make sure that I'm

11:02

16 understanding your testimony, you believe that if  
17 Ms. Kelly had specifically told you about work  
18 restrictions, you would have sent an email to  
19 yourself and to the leads?

20 A. Yes.

11:02

21 Q. And as we sit here today, do you know  
22 whether or not you did that?

23 MR. PAETKAU: Objection. Lacks  
24 foundation.

25 THE WITNESS: I don't remember.

11:02



1 BY MS. McFADDEN:

2 Q. And in terms of -- you said that if you  
3 had received restrictions from Ms. Kelly, you would  
4 have sent an email to yourself as well as these  
5 leads. 11:03

6 Why would you have done that?

7 A. Just to let the lead knows that if there's  
8 any accommodation we need to make, they know, so  
9 they don't expect her to do more than what she can.

10 Q. Any reason you wouldn't have communicated 11:03  
11 to HR?

12 A. Don't remember.

13 Q. Did somebody tell you that if an employee  
14 comes in with restrictions, that's what you should  
15 do, is send an email to yourself and leads? 11:04

16 A. No.

17 Q. When Ms. Kelly returned to work after  
18 being out on the first leave of absence, did you  
19 have any concern about her being reinjured?

20 A. Yes. 11:04

21 Q. What was your concern?

22 A. My concern was for her to come back and --  
23 and reinjure herself again, and come with safety  
24 also for people that work around her.

25 Q. Okay. So this is just to make sure I've 11:04

1 THE WITNESS: No.

2 BY MS. McFADDEN:

3 Q. So you think they're your personal  
4 property?

5 A. Yes.

11:31

6 Q. So after the reinjury, did Ms. Kelly go  
7 out on another leave of absence?

8 A. Yes, I think so.

9 Q. Well, when you think so, do you have any  
10 doubt about that?

11:31

11 A. No.

12 Q. Okay. Do you know when she went out on  
13 the second leave of absence for -- due to her  
14 ankle?

15 A. I don't remember.

11:31

16 Q. Did you have any communications at all  
17 with Ms. Kelly prior to her going out on the second  
18 leave of absence, other than what you've already  
19 told me about?

20 A. No.

11:32

21 Q. Did you have any idea how long she was  
22 going to be out for --

23 A. No.

24 Q. -- when she went out -- just let me  
25 finish. Let me finish the whole question.

11:32

1           When she went out on the second leave of  
2           absence, at the time she went out, did you have any  
3           idea how long she was going to be out?

4           A. No.

5           Q. Okay. At the time of the reinjury, did           11:32  
6           you have any discussions with anybody at Applera  
7           about what had happened?

8           A. Can you -- can you say that again?

9           Q. Sure. Let me break it down more  
10          specifically.   11:33

11          In terms of the reinjury to Ms. Kelly's  
12          ankle, did you have any discussions at the time it  
13          happened with anybody at Applera about what had  
14          happened?

15          MR. PAETKAU: Objection. Asked and           11:33  
16          answered.

17          THE WITNESS: I don't remember.

18          BY MS. McFADDEN:

19          Q. Okay. Does Applera have a special  
20          division that's assigned to safety issues?           11:33

21          A. Just a safety officer, who was Merte  
22          Miles.

23          Q. Okay. And what division does Merte Miles  
24          work for?

25          A. I don't know.                                   11:33

1 Q. Okay. I want to talk about communications  
2 between you and Ms. Kelly from when she went out on  
3 the second leave of absence after the reinjury  
4 through the end of 2005. So let's focus on that  
5 time frame. 11:41

6 Do you have that in mind?

7 A. No.

8 Q. All right. So this would be when she went  
9 out on a leave of absence. And I know you don't  
10 recall the exact date, but we've been looking at 11:41  
11 these papers, and I know you said that didn't  
12 refresh your recollection. But whatever date she  
13 did go out for the reinjury through the end of  
14 2005. And I want to talk about any communications  
15 you may have had with Ms. Kelly during that time 11:42  
16 frame.

17 Do you recall any communications at all  
18 with Ms. Kelly from when she went out on the leave  
19 of absence for the reinjury and the end of 2005?

20 A. Yes. 11:42

21 Q. Okay. How many communications did you  
22 have with Ms. Kelly during that time frame?

23 A. One.

24 Q. And was the one communication you had in  
25 person, on the telephone? 11:42

1 A. Telephone.

2 Q. And was this a conversation where you and  
3 she actually spoke?

4 A. Yes.

5 Q. Okay. About when was that conversation? 11:42

6 A. I don't remember.

7 Q. Okay. But it was sometime between when  
8 she went out on leave of absence and the end of  
9 2005?

10 A. I don't remember. 11:42

11 Q. Okay. So it could have been after the end  
12 of 2005?

13 A. Yes.

14 Q. Okay. All right. Well, when she first --  
15 when she went out on a leave of absence, was she 11:43  
16 leaving you voicemails periodically?

17 MR. PAETKAU: Objection.

18 BY MS. McFADDEN:

19 Q. During that time frame of -- let's just  
20 focus on the time frame of September 2004 through 11:43  
21 the end of 2005.

22 Did Ms. Kelly leave you any voicemails on  
23 your work voicemail during that time frame?

24 A. I don't remember.

25 Q. So as we sit here today, you don't 11:43

1 remember having received a single voicemail from  
2 Ms. Kelly during that time frame?

3 A. I may have. I don't remember.

4 Q. Do you remember returning any voicemails  
5 that she left for you during the time frame of 11:44  
6 September 2004 through the end of 2005?

7 MR. PAETKAU: Objection. That question  
8 assumes facts not in evidence, and is therefore  
9 argumentative; and lacks foundation.

10 THE WITNESS: I don't remember. 11:44

11 BY MS. McFADDEN:

12 Q. Okay. Is there any reason that, if  
13 Ms. Kelly left you a voicemail during the time  
14 frame of September 2004 to the end of 2005, you  
15 wouldn't have returned the call? 11:44

16 A. No.

17 Q. As we sit here today, have you heard that  
18 Ms. Kelly had a complaint that she was leaving you  
19 voicemails and you never returned her calls during  
20 the time frame of September 2004 through the end of 11:44  
21 2005?

22 A. No.

23 Q. Okay. And just to make sure we have your  
24 testimony today, as we sit here today, you just  
25 don't remember one way or another whether or not 11:44

1 she left you voicemails during that time frame?

2 A. Yes, I don't remember.

3 Q. Okay. So she may have? She may not have?

4 A. Yes.

5 Q. When you received voicemails, did you 11:45  
6 document who was calling you and what they were  
7 calling you about?

8 MR. PAETKAU: Objection. Hopelessly  
9 overbroad; vague and ambiguous.

10 MS. McFADDEN: Well, let me work on that. 11:45

11 BY MS. McFADDEN:

12 Q. Did you have a practice of, when you're  
13 checking your voicemails, jotting down who was  
14 calling, the time and date, what they were calling  
15 about and so forth? 11:45

16 A. I did --

17 MR. PAETKAU: Objection. Overbroad.  
18 You can answer.

19 THE WITNESS: I did, but not always.

20 BY MS. McFADDEN: 11:45

21 Q. So sometimes you would jot that down, but  
22 not always?

23 A. Correct.

24 Q. Well, how did you decide when you were  
25 going to write it down and when you weren't? 11:45

1 in your daily notebook, would you have done  
2 anything else?

3 MR. PAETKAU: Objection. Incomplete  
4 hypothetical; lacks foundation; calls for  
5 speculation. 11:48

6 THE WITNESS: Well, it depends on what the  
7 voicemail say.

8 BY MS. McFADDEN:

9 Q. Okay. Well, as to voicemails that just  
10 updated you on her status in terms of "I visited my 11:48  
11 doctor and I'm still out on leave of absence,"  
12 something along those lines, "I'm still unable to  
13 return to work," "I'm still out," something along  
14 those lines, if you had received a message like  
15 that, other than jotting it down in your notebook, 11:48  
16 would you have communicated it to anybody in the  
17 company?

18 MR. PAETKAU: Objection. That question  
19 assumes facts not in evidence; it's argumentative;  
20 lacks foundation; calls for speculation; and is an 11:48  
21 incomplete hypothetical; and compound.

22 THE WITNESS: No.

23 BY MS. McFADDEN:

24 Q. Okay. And what's the reason that you  
25 would not have communicated that to anybody in the 11:48



1 company, that Ms. Kelly had left you such a  
2 message?

3 MR. PAETKAU: Objection. Again,  
4 argumentative; lacks foundation; calls for  
5 speculation; incomplete hypothetical. 11:49

6 THE WITNESS: Could just be like "FYI,  
7 this is my status."

8 BY MS. McFADDEN:

9 Q. Okay. But did you think that you had an  
10 obligation to let people in HR know what was going 11:49  
11 on with Ms. Kelly?

12 MR. PAETKAU: Objection. Assumes facts  
13 not in evidence; lacks foundation; argumentative.

14 THE WITNESS: I don't know.

15 BY MS. McFADDEN: 11:49

16 Q. So other than voicemails and the one call  
17 you referenced, which we're not sure was in that  
18 time frame -- well, you said you're not sure about  
19 voicemails, but you recall one telephone call, but  
20 you're not sure whether it was before or after the 11:50  
21 end of 2005.

22 Other than that one call and voicemails,  
23 which you're not sure about whether or not there  
24 were, any other kind of communications you had with  
25 Ms. Kelly during the time frame of September '04 11:50

1 through the end of 2005? So that would be written  
2 communications, letters, emails and so forth.

3 A. I don't remember.

4 Q. Okay. Do you remember receiving any  
5 emails at all from Ms. Kelly during the time frame 11:50  
6 of September 2004 and the end of 2005?

7 A. I don't remember.

8 Q. During the time frame of September '04  
9 through the end of 2005, did anybody at Applera  
10 talk to you about Ms. Kelly's status? 11:51

11 A. I don't remember.

12 Q. Do you have any knowledge about  
13 Ms. Kelly's physical condition in terms of her  
14 ankle during the time frame of September 2004  
15 through the end of 2005? 11:51

16 A. I do, but again, I don't know is it early  
17 2006 or is it 2005. I don't know the time line.  
18 But I know about her conditions. I spoke to her on  
19 the phone.

20 Q. Okay. Well, we'll talk about that phone 11:51  
21 call in a little bit. But let's talk about prior  
22 to that first.

23 So the reinjury was in 2004, correct? And  
24 I know you don't know the exact date, but -- well,  
25 it was in 2004. You know that? 11:51

1 A. Yes.

2 Q. Okay. All right. Did you have any  
3 information -- let's just focus on the time frame  
4 of September 2004 through mid 2005.

5 Did you have any information about how she 11:52  
6 was doing, whether her condition was improving and  
7 so forth?

8 A. I don't remember.

9 Q. Okay. So at some point, did you come to  
10 learn that Ms. Kelly wanted to return to work at 11:53  
11 Applera after having been out on a leave of absence  
12 for the reinjury?

13 A. Yes.

14 Q. Okay. And when is it that you first came  
15 to learn that Ms. Kelly wanted to come back to 11:53  
16 Applera after having been out on a leave of absence  
17 for her reinjury?

18 A. I spoke to her on the phone.

19 Q. Okay. So speaking to her on the phone is  
20 the very first you ever heard anything about 11:53  
21 Ms. Kelly wanting to return to work after having  
22 been out on a leave of absence for her reinjury?

23 A. Yes.

24 Q. All right. So when was this telephone  
25 conversation? 11:53

1 A. Oh, I don't remember.

2 Q. Can you give me an estimate?

3 A. No.

4 Q. Can you say whether it was January 2006?

5 A. I can't remember. 11:53

6 Q. Was it between December 2005 and February  
7 of 2006?

8 A. Could be.

9 Q. Okay. Who initiated the call?

10 A. She left me a voicemail, and I called her 11:54  
11 back.

12 Q. Okay. Did you call her back the same day?

13 A. I don't remember.

14 Q. So you're not sure if you called her back  
15 the same day? 11:54

16 A. No, I don't remember.

17 Q. What did the voicemail to you say?

18 A. I don't remember.

19 Q. You have no idea what it said?

20 MR. PAETKAU: No, he doesn't remember. 11:54

21 BY MS. McFADDEN:

22 Q. You don't remember anything at all about  
23 it?

24 A. Yeah, I don't remember. The voicemail she  
25 left me, I don't remember what the voicemail say. 11:54

1 Q. Okay. And I'm not looking for anything  
2 exact. You know, it's a long time ago and so  
3 forth. But I just want to know if you recall  
4 anything at all about what she -- what the  
5 voicemail said. 11:55

6 A. No.

7 Q. Okay.

8 A. But -- but I call her back. Must be  
9 something in there that's pretty important.

10 Q. Okay. And you said you're not sure when 11:55  
11 you called her back.

12 Was it within at least a couple of days  
13 when she left you the voicemail?

14 A. God, I don't remember.

15 Q. Okay. And in between the time she left 11:55  
16 you the voicemail and the time you called her back,  
17 did you have any discussions with anybody else at  
18 Applera about Ms. Kelly?

19 A. I did, but I don't know if it's before I  
20 call her back or -- you know what, I did, after I 11:55  
21 spoke to her on the phone.

22 Q. Okay. So right now I just want to focus  
23 on before you spoke with her on the phone.

24 Do you have any recollection of -- in  
25 between the time she left you the voicemail and the 11:55

1 time you called her, any recollection of talking to  
2 anybody at Applera about Ms. Kelly?

3 A. Don't remember.

4 Q. Okay. All right. So the conversation  
5 that you had with her, you initiated that call, 11:55  
6 right?

7 A. She left me a voicemail, and I call back.

8 Q. Okay. Was it just you and she  
9 participating in this conversation?

10 A. Yes. 11:56

11 Q. How long was the conversation?

12 A. I don't remember.

13 Q. Okay. Can you give me an estimate? Less  
14 than five minutes?

15 A. Between five and ten minutes. 11:56

16 Q. Five to ten minutes.

17 So tell me everything that you recall  
18 saying during the conversation.

19 A. I call her back, probably asking how she's  
20 doing and I got her message, and try to get -- you 11:56  
21 know, "What is the status of your injury?"

22 And then she goes and tell me that -- she  
23 told me that she has been released by the doctor,  
24 but she still could not walk or drive on her own.

25 So I told her, "Well, I'll contact the 11:57

1 safety people and will have them get back to you."

2 Q. Do you specifically remember her saying  
3 those exact words, she could not walk --

4 A. Yes.

5 Q. -- or drive?

11:57

6 A. Yes.

7 MR. PAETKAU: You have to wait again. I  
8 know we're kind of in conversation mode, but so the  
9 court reporter can make a clean record.

10 MS. McFADDEN: Okay.

11:57

11 BY MS. McFADDEN:

12 Q. So you're certain she said she could not  
13 walk at all?

14 A. Yes.

15 Q. Okay. What else did Megan tell you?

11:57

16 A. That her doctor released her.

17 Q. What did she tell you about the doctor's  
18 release?

19 A. Say that again.

20 Q. Well, what is it she told you in terms of  
21 the doctor's release?

11:57

22 A. That's it. She told me she's been  
23 released by the doctor.

24 Q. She didn't tell you what the restrictions  
25 were that the doctor gave her?

11:58

1 A. No.

2 Q. Did you ask her what they were?

3 A. No.

4 Q. Why didn't you ask her what they were?

5 A. Because she told me she could not drive, 11:58  
6 could not walk. So basically, to me is, you know,  
7 I need to consult an expert, the safety people, you  
8 know, to evaluate what -- can we or can we not  
9 accommodate her.

10 Q. Did she tell you anything about her doctor 11:58  
11 limiting the number of hours she could work, during  
12 that phone call?

13 A. I don't remember.

14 Q. Did she tell you anything in that phone  
15 call about any other physical limitations on her 11:58  
16 work?

17 A. No, just besides she can't walk or she  
18 can't drive.

19 Q. Did she say anything about she needed to  
20 sit down every hour for ten minutes? 11:58

21 A. No.

22 Q. Did she tell you anything that she  
23 couldn't lift over 20 pounds?

24 A. I don't remember.

25 Q. Is it possible she said those things and 11:59



1 you're just not remembering?

2 A. Could be.

3 Q. Anything else you remember Ms. Kelly  
4 telling you during this telephone call?

5 A. No.

11:59

6 Q. Did you ask her for any additional  
7 information?

8 A. No.

9 Q. Okay. So you've told me now everything  
10 you remember Ms. Kelly saying during this phone  
11 call?

11:59

12 A. I think so.

13 Q. Okay. And anything else you remember  
14 telling Ms. Kelly during this phone call other than  
15 what you've already told me about?

11:59

16 A. No.

17 Q. No. Okay. So I've got the complete  
18 conversation, to your recollection?

19 A. I think, from what I remember.

20 Q. Okay. So what's the first thing you did  
21 after having this telephone call with Ms. Kelly?

11:59

22 A. I emailed -- I think it's Merte -- about  
23 the situation, what I learned from talking to  
24 Megan. And I also -- I think that I also had told  
25 her my concerns of having, you know, someone in

12:00

1 that condition come in and work, because it becomes  
2 a safety issue because we are dealing with  
3 flammable materials.

4 Q. Okay. So when you say you told Merte, did  
5 you -- you said you first -- when I asked you 12:01  
6 what's the first thing you did, you said you  
7 emailed Merte.

8 A. Yes.

9 Q. Then you gave some testimony about you  
10 told Merte. 12:01

11 A. In the email.

12 Q. Okay. So when you say "told," you mean  
13 you told her in the email?

14 A. Correct.

15 Q. Did you send this email to Merte the same 12:01  
16 day you had this conversation with Ms. Kelly?

17 A. I don't remember.

18 Q. Was it within a day or two of the  
19 conversation with Ms. Kelly?

20 A. Probably, because it's pretty important. 12:01

21 MS. McFADDEN: Okay. We'll mark this next  
22 in order. This will be Exhibit 4.

23 The court reporter will mark this and give  
24 you a copy to look at.

25 (Plaintiff's Exhibit No. 4 marked for

1 Q. Okay. All right. Well, let's look at  
2 this again.

3 And do you believe this to be accurate?  
4 Is that the email you sent?

5 A. Yeah. 12:08

6 Q. Okay. So the email says that you spoke to  
7 her this morning. Per the doctor's request, she  
8 was released to work only 12 hours a week.

9 So now that you've read this email, does  
10 that refresh your recollection that, in your call 12:08  
11 with Ms. Kelly, she told you she could return 12  
12 hours a week?

13 A. I don't remember, but must be.

14 Q. Okay. And as you're looking at this  
15 email, does that refresh your recollection about 12:08  
16 anything else Ms. Kelly told you during that  
17 telephone call?

18 A. No.

19 Q. Okay. And looking at the email, it says  
20 "I received a call from Megan Kelly today." 12:08

21 So looking at the email date of 1/24/06,  
22 does that refresh your recollection that the call  
23 with Ms. Kelly was on January 24th?

24 A. Yeah.

25 Q. Okay. And that's the only call you've had 12:08

1 with Ms. Kelly?

2 A. Yes.

3 Q. Okay. All right. So let's look at the  
4 last line of this email. It says "She spoke with  
5 someone in HR Direct, and I'm waiting to hear from 12:09  
6 them."

7 Okay. And the "she" is referring to  
8 Ms. Kelly, right, in that last sentence?

9 A. Yes.

10 Q. Okay. So during the telephone 12:09  
11 conversation with Ms. Kelly, did she tell you about  
12 having spoken to somebody in HR Direct?

13 A. She must have; otherwise, I wouldn't have  
14 write it down.

15 Q. And as we sit here today, any 12:09  
16 recollection, now that you're looking at this  
17 email, about what she told you in terms of talking  
18 to somebody in HR Direct?

19 A. I don't remember.

20 Q. Okay. 12:09

21 MR. PAETKAU: I think she's asking if this  
22 refreshes your memory.

23 THE WITNESS: No.

24 BY MS. McFADDEN:

25 Q. Okay. Well, you wouldn't have put it down 12:09

1 STATE OF CALIFORNIA )

2 )

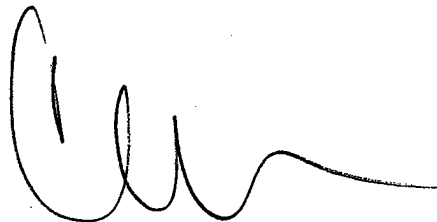
3 COUNTY OF ALAMEDA )

4  
5 I, CAROL SCHILP, do hereby certify:

6 That JONATHAN LAOSIRI, in the foregoing  
7 deposition named, was present and by me sworn as a  
8 witness in the above-entitled action at the time  
9 and place therein specified;

10 That said deposition was taken before me at  
11 said time and place, and was taken down in  
12 shorthand by me, a Certified Shorthand Reporter of  
13 the State of California, and was thereafter  
14 transcribed into typewriting, and that the  
15 foregoing transcript constitutes a full, true and  
16 correct report of said deposition and of the  
17 proceedings that took place;

18 IN WITNESS WHEREOF, I have hereunder  
19 subscribed my hand this 21st day of April 2008.

20  
21  
22  
23  
24  
25  
  
\_\_\_\_\_  
CAROL SCHILP, CSR No. 9648  
State of California

## **EXHIBIT 5**

**Applera**  
Corporation

850 Lincoln Centre Drive  
Foster City, CA  
94044 USA

October 30, 2006

Megan Kelly  
2009 McGee, No. 2  
Berkeley, CA 94703

Dear Ms. Kelly,

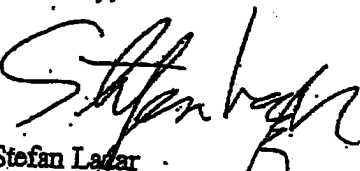
Our records indicate that your last day at work with Applied Biosystems was September 21, 2004. On September 22, 2004 you were placed on a Leave of Absence.

On January 3, 2007 you will have exhausted all available leave of absence time and it is our intention to process a termination effective that date.

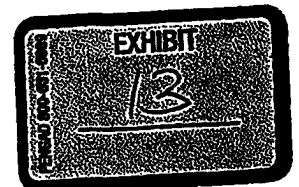
Beginning February 1, 2007, you will be eligible to continue insurance coverage under COBRA. You will receive a packet in the mail explaining your continuation options along with COBRA enrollment instructions and forms.

Please contact HR Direct at (866) 654-3411 if you have any questions.

Sincerely,

  
Stefan Lazar  
Employee Relations Mgr.  
Applera Corporation

KELLY 0185



## **EXHIBIT 6**



## LAW OFFICES OF MAUREEN E. MCFADDEN

819 Bancroft Way  
Berkeley, CA 94710  
www.mcfaddenlaw.net

December 22, 2006

Ph (510) 845-5203  
Fax (510) 868-0976  
maureen@mcfaddenlaw.net

### VIA FEDERAL EXPRESS

Administrator/HR Client Services  
Applied Biosystems/Applera Corporation  
850 Lincoln Centre Drive  
Foster City, CA 94404

Re: *Megan Kelly/Applied Biosystems*

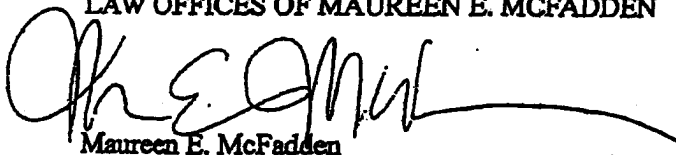
To Whom It May Concern:

Please be advised that this office represents Megan Kelly as to her employment-related claims against Applied Biosystems, and direct all future communications to my attention. Enclosed is a request for Ms. Kelly's personnel file and related documents. Please forward these documents to me at your earliest opportunity.

Our demand letter will follow shortly.

Very Truly Yours,

LAW OFFICES OF MAUREEN E. MCFADDEN



Maureen E. McFadden

Encl.

cc. Client

KELLY 0190

Dec 21 06 09:03p

Allyna

510 845 7636

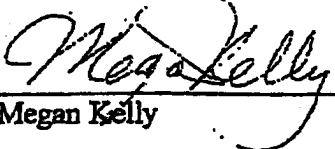
P.3

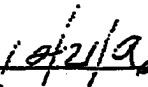
Pursuant to Labor Code § § 432 and 1198.5, I hereby request a copy of the following documents:

- My personnel file
- Any other documents pertaining to my performance.
- Any other documents I signed at any time relating to my employment with Applied Biosystems.

Please direct these documents to the attention of my attorney:

MAUREEN E. McFADDEN  
LAW OFFICES OF MAUREEN E. McFADDEN  
819 Bancroft Way  
Berkeley, CA 94710  
Ph (510) 845-5203  
Fax (510) 868-0976

  
Megan Kelly

  
Date

KELLY 0191

## **EXHIBIT 7**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

MEGAN KELLY,

)

)

Plaintiff,

)

)

vs.

)

No. C-07-3002 MMC

)

APPLERA CORPORATION,

)

)

Defendant.

)

CERTIFIED COPY

)

DEPOSITION OF  
ANDREW HASKELL, M.D.  
PALO ALTO, CALIFORNIA  
MAY 30, 2008

REPORTED BY: JANE H. STULLER, CSR NO. 7223, RPR  
(409740)

ANDREW HASKELL, M.D. May 30, 2008

1 Q. Okay. Have you reviewed any documents in  
2 preparation for this deposition?

3 A. I reviewed my clinic notes.

4 Q. Okay. And do you have those with you here  
5 today?

6 A. I do.

7 Q. Okay. Did you speak with anyone about this  
8 deposition today?

9 A. No.

10 Q. Have you spoken with Ms. McFadden about this  
11 deposition?

12 A. No.

13 Q. Okay. Have you spoken with Ms. Kelly recently?

14 A. No.

15 Q. When was it the last time? Was it your last --

16 A. My last clinic visit.

17 Q. -- office visit?

18 Okay. I'm going to be showing you the records  
19 that your office produced in response to a subpoena from  
20 my office. And these are numbered, Dr. Haskell,  
21 starting with No. 1 through about 147.

22 Do you recognize these documents in this  
23 format?

24 A. They look like our clinic notes.

25 Q. Okay. How are these notes created?

1 Do you dictate them verbally and then someone  
2 types them?

3 A. Typically I dictate them verbally, and someone  
4 types them. Occasionally we will type them in  
5 ourselves.

6 Q. Okay. And if you dictate them verbally,  
7 typically how long -- within how much times does  
8 somebody type them?

9 A. Typically within a week.

10 Q. Okay. And who typically types them?

11 A. A service provided to us. I don't know who  
12 that person is.

13 Q. Okay. And is it your belief that everything  
14 that's typed up in these records is true and correct?

15 A. I believe so.

16 Q. How did Ms. Kelly come to be in your care? Did  
17 someone refer her?

18 A. I'm not sure --

19 Q. Okay.

20 A. -- how she came to see me.

21 Q. Okay.

22 A. Perhaps -- I sent my first note to another  
23 doctor in the clinic -- Barry Rose. It may be that he  
24 sent them, but I can't be sure.

25 Q. Okay. Are you aware that Ms. Kelly, through

CERTIFICATE OF REPORTER

I, JANE H. STULLER, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth and nothing but the truth in the within-titled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of said witness was therefore reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition, review of the transcript [ ] was ☒ was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed was appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED June 9, 2008.



JANE H. STULLER, CSR 7223, RPR

## **EXHIBIT 8**



Feb 14 07 11:53a

Alyna

510 845 7636

p. 1



*Palo Alto Medical  
Foundation*

A Sutter Health Affiliate

Fremont Center

3200 Kearney Street  
Fremont, CA 94538  
(510) 490-1222  
[www.pamf.org](http://www.pamf.org)

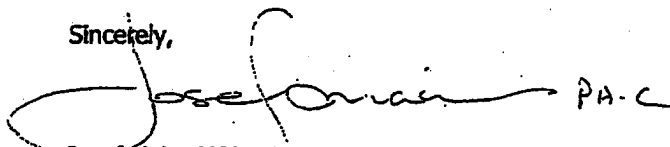
February 13, 2007

To Whom It May Concern:

Megan Kelly has been under my care regarding her bilateral wrist injuries and is able to return to work on 2/15/07. She will need to work with her wrist splints on and will need to avoid heavy lifting of 5 lbs or more.

Remarks: Bilateral TFCC tears, wrists.

Sincerely,

 PA-C  
Josef Maier MSPA-C.

## **EXHIBIT 9**

## LAW OFFICES OF MAUREEN E. MCFADDEN

819 Bancroft Way  
Berkeley, CA 94710  
www.mcfaddenlaw.net

Ph (510) 845-5203  
Fax (510) 868-0976  
maureen@mcfaddenlaw.net

February 23, 2007

### VIA FEDERAL EXPRESS

Veronica Jones  
Senior Manager, Employee Relations  
Applied Biosystems  
850 Lincoln Centre Drive  
Foster City, CA 94404

Re: Megan Kelly v. Applied Biosystems

Dear Ms. Jones:

This letter is written pursuant to Evidence Code § 1152, in an effort to settle Megan Kelly's employment-related claims against Applied Biosystems.

Ms. Kelly commenced employment as an Associate Production Chemist with Applied Biosystems in February 2002. Her performance was excellent. She received strong reviews, and agreeably worked the long hours often demanded. Throughout her time with Applied Biosystems, Ms. Kelly was a valued employee.

On July 6, 2004, Ms. Kelly tripped and sprained her ankle. After a short medical leave and a course of physical therapy, Ms. Kelly was released to return to work in September 2004. As part of her release to work, Ms. Kelly was supposed to be able to sit down whenever she needed to. However, Applied Biosystems was extraordinarily busy during this timeframe, and short-handed. Ms. Kelly, who generally worked alone, was pressured to get orders done quickly. As a result, she was seldom able to sit down.

On September 21, 2004, while moving about extensively and attending to multiple tasks at the same time, Ms. Kelly re-injured her right ankle. Emergency room physicians diagnosed Ms. Kelly with another ankle sprain, and she was again taken off of work. The re-injury was quite serious, in that Ms. Kelly's ankle did not heal well, and she continued to experience serious instability in her right ankle. Several subsequent falls have further aggravated the injury, and Ms. Kelly has also sustained wrist injuries in those falls.

Ms. Kelly has been under the care of numerous physicians while out on leave from Applied Biosystems. Throughout her leave, Ms. Kelly regularly left telephone messages with her immediate supervisor, Jonathon Laosiri, regarding her status and the progress of her recovery. Ms. Kelly also faxed doctor's notes to Applied Biosystems, to Mr. Laosiri's attention. Neither Mr. Laosiri nor anyone else from Applied Biosystems ever responded to Ms. Kelly's telephone messages, or communicated with her in any manner regarding her continued leave.

In January 2006, Ms. Kelly's physicians determined that she was well enough to return to work, albeit with restrictions as to the number of hours she could work, a restriction on lifting any more than 20 lbs, and a requirement that she sit down every hour for at least 10 minutes. Ms. Kelly provided

- 2 -

February 23, 2007

Applied Biosystems with a doctor's note authorizing her to work, and specifying these restrictions. Ms. Kelly's supervisor, Jonathon Laosiri, continued to fail to respond to her. Ms. Kelly then called Applied Biosystem's HR department directly, and again explained that she was authorized to return back to work, and the nature of her work restrictions. Applied Biosystems made no effort to get Ms. Kelly back to work. Instead, the company summarily informed Ms. Kelly that she could not return to work unless she either had no restrictions at all and/or could work at least 20 hours per week.

Applied Biosystem's above-described conduct is in clear violation of California law. Ms. Kelly's ankle condition constitutes a "physical disability" within the meaning of the Fair Employment and Housing Act, in that it is a physiological condition that limits (i.e. makes more difficult) her achievement of the major life activity of work. Govt. Code § 12926(k). As such, Ms. Kelly is entitled to all the protections afforded under the law for individuals with disabilities. In particular, when an employee with a known physical disability requests accommodation, the employer is then obligated to engage in a timely good faith "interactive process." Govt. Code § 12940(n). Ms. Kelly's presentation of the January 2006 doctor's note to Applied Biosystems triggered its obligation to engage in the interactive process with her.

The "interactive process" refers to the back and forth dialogue and exchange of information between an employer and employee that is needed to determine what type of accommodation will aid an employee. As one court has explained of the interactive process: "Employers should meet with the employee who requests accommodation, request information about the condition and what limitations the employee has, ask what he or she specifically wants, and offer and discuss available alternatives when the request is burdensome." Taylor v. Phoenixville School Dist., 184 F.3d at 317. Because Applied Biosystems summarily dismissed Ms. Kelly's January 2006 request for accommodation, without making any effort whatsoever to analyze her work restrictions, or to explore options that would have enabled her to return to work, it will be held liable on a claim for failure to engage in the interactive process. See Claudio v. Regents of the University of California (2005) 134 Cal.App.4<sup>th</sup> 224.

Applied Biosystems will also be held liable on a separate claim for failure to accommodate, pursuant to Govt. Code § 12940(m). Employers have an affirmative duty to accommodate disabled workers. Ms. Kelly was not requesting anything extraordinary. The Fair Employment and Housing Act specifically identifies "offering part-time or modified work schedules" as a potential reasonable accommodation. Govt. Code § 12926(n); 2 Cal. Code Regs. § 7293.9(a). Allowing an employee to sit down and/or take breaks more often than is typical is also a well-accepted and common reasonable accommodation. If this matter is litigated, we are confident the evidence will show that Applied Biosystems could have accommodated Ms. Kelly's disability.

Ms. Kelly took pride in her job with Applied Biosystems, and was crushed at the company's unwillingness to assist in getting her back to work. Applied Biosystem's conduct is particularly despicable in light of the fact that Ms. Kelly's October 2004 re-injury was a workplace accident, which may have been caused in part by the company's inadequate accommodation of her original July 2004 sprained ankle. Ms. Kelly has experienced significant emotional distress arising out of Applied Biosystem's conduct. She has also sustained a substantial economic loss, including more than a year's work of salary and associated benefits.

- 3 -

February 23, 2007

Applied Biosystem's outrageous conduct towards Ms. Kelly may also warrant punitive damages. A sampling of recent disability discrimination verdicts demonstrates that juries take these claims seriously, and don't hesitate to award large emotional distress and punitive damages awards:

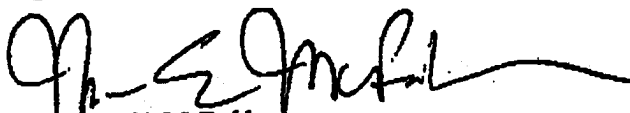
<u>Case</u>	<u>Economic Damages</u>	<u>Emotional Distress</u>	<u>Punitives</u>	<u>Total Jury Verdict</u>
Martin v. Arrow Electr.(2006)	\$1M		\$500K	\$1.5M
Carr v. Wash. Mutual (2006)	\$118K	\$682K		\$800K
McGee v. Tucoemas (2005)	\$542K	\$1.5M	\$1.2M	\$3.2M
Welch v. Anaheim (2005)	\$215K	\$5M		\$5.2M
Roby v. McKesson (2004)	\$1.3M	\$2.7M	\$15M	\$19M
Wrynski v. Agilent (2004)	\$850K	\$117K	\$3.8M	\$4.8M
Green v. State (2003)	\$597K	\$2M		\$2.6M
McMurray v. Burbank (2003)	\$997K	\$537K		\$1.5M
Tousignant v. San Bernardino (2002)	\$445K	\$1M		\$1.4M

Ms. Kelly wants to move on with her life, and will agree to settle all past disability and related claims against Applied Biosystems for \$75,000. She also wants her job back. Ms. Kelly hereby demands that Applied Biosystems promptly engage in the interactive process with her, and offer such reasonable accommodations as will allow her to return to work as quickly as possible. Towards that end, Ms. Kelly's current work restrictions are enclosed with this letter.

Please provide a response within one week of the date of this letter. If we do not hear from you by that time, we will commence litigation.

Very Truly Yours,

LAW OFFICES OF MAUREEN E. MCFADDEN



Maureen E. McFadden

Encl. Current work restrictions  
DFEH Complaint and right to sue letter

## **EXHIBIT 10**

**Applera**  
Corporation  
301 Merritt 7  
Norwalk, CT 06851

March 28, 2007

**VIA E-MAIL AND U.S. MAIL**

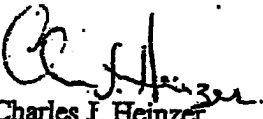
Maureen E. McFadden, Esq.  
819 Bancroft Way  
Berkeley, CA 94710

**Re: Megan Kelly**

Dear Ms. McFadden:

Applera's Human Resources Department recently attempted to contact Ms. Kelly to set up a meeting regarding her return to work. The Company has not heard from her. May I ask you to contact your client and let us know when she desires to discuss her return.

Sincerely,



Charles J. Heinzel  
Senior Director, Attorney

cc: V. Jones

**KELLY 0147**

## **EXHIBIT 11**



npr 30 07 12:01p

Align

510 845 7663

P.1



*Palo Alto Medical  
Foundation*

A Sutter Health Affiliate

Fremont Center

3200 Kearney Street  
Fremont, CA 94538  
(510) 490-1222  
[www.pamf.org](http://www.pamf.org)

Megan Kelly  
2009 McGee Ave  
Apt 2  
Berkeley, CA 94703

April 25, 2007


MRN# 15221641

To Whom It May Concern:

My patient, Megan Kelly, is currently under my care for her wrists. She may return to work with restrictions. She should not lift more than 2 lbs with either hand. She should avoid repetitive movements with either hand/wrist for prolonged periods, no longer than 15 minutes at a time. She may file and pour liquids with these limitations.

If you have any questions, please feel free to call my office at (510) 490-1222.

Sincerely,

  
Barry Rose, MD  
Orthopedic Surgeon  
Fremont Clinic

KELLY 0146

## **EXHIBIT 12**

May 14 07 12:31p Rlyn

510 845 636

P.2



**Palo Alto Medical  
Foundation**

A Sutter Health Affiliate

Fremont Center

3200 Kearney Street  
Fremont, CA 94538  
(510) 490-1222  
[www.pamf.org](http://www.pamf.org)

Megan Kelly  
2009 McGee Ave  
Apt 2  
Berkeley, CA 94703

May 9, 2007

MRN# 15221641

To Whom It May Concern:

My patient, Megan Kelly, is currently under my care for her wrists. She was seen and evaluated in the office today, May 9, 2007. She may return to work with restrictions. She should not lift more than 2 lbs with either hand. She should avoid repetitive movements with either hand/wrist for prolonged periods, no longer than 15 minutes at a time. She may file and pour liquids with these limitations.

If you have any questions, please feel free to call my office at (510) 490-1222.

Sincerely,

Barry Rose, MD  
Orthopedic Surgeon  
Fremont Clinic

KELLY 0143

## **EXHIBIT 13**

May 25 07 02:30p

Aligna

510 845 36

P. 2



**Palo Alto Medical  
Foundation**

A Sutter Health Affiliate

**Fremont Center**

3200 Kearney Street  
Fremont, CA 94538  
(510) 490-1222  
[www.pamf.org](http://www.pamf.org)

May 24, 2007

Megan Kelly  
2009 Mcgee Ave  
Apt 2  
Berkeley, CA 94703

To Whom It May Concern:

Megan Kelly was seen and evaluated in clinic today. She may return to part-time work with limited repetitive activities.

If you have any questions, please do not hesitate to call my office at (510) 490-1222.

Sincerely,

Barry A. Rose, M.D.  
Palo Alto Medical Foundation  
Fremont Center  
3200 Kearney Street  
Fremont, CA 94538

**KELLY 0140**

## **EXHIBIT 14**

May 29 07 02:16p

ALY

510 84. 7636

P.1

# PACIFIC

Orthopaedic & Sports Rehabilitation

5/25/07

To Whom It May Concern:

Megan Kelly is currently receiving physical therapy care s/p arthroscopic surgery for right wrist TFCC tear. She presents with pain, weakness, decreased ROM and decreased functional use of her right hand as a result. Megan wears a wrist splint during the day for activities of daily living to preserve her recovery and prevent injury. We recommend the following work restrictions to continue promoting her full recovery.

Regarding her job description:

1. Regularly, and as needed, assemble MicroRNA boxes, requiring bending, stooping, and lifting.

*Megan is limited to only 5 pounds of weight maximally at this time and must take breaks to rest the right wrist/hand every 20 minutes.*

2. Regularly inspect CORE packaging, including reconstitution of vibrating plates.

*Megan may not subject the wrist and hand to repeated pressure and vibration; should avoid reconstituting the vibration plates.*

3. Redline SOPs using standard writing implements and or personal computer.

*Megan must take a 10 minute break from typing, after 20 minutes, for rest or change of task.*

4. Regularly assist operators with total preventive maintenance, which requires wiping down instruments and workbenches with wipes; returning tools to their designated location; and performing visual checks on instruments.

*Megan needs to wear her wrist brace at all times while working and must avoid extreme positions of wrist flexion or extension during this task.*

5. Routinely perform data collection for OEE, which requires manipulating Excel spreadsheets and performing simple calculation using standard keyboard and mouse.

*Megan must take a 10 minute break from typing, after 20 minutes, for rest or change of task.*

6. Coordinate training for operators, which may involve any or all of the activities listed above.

*See above.*

Sincerely,

*Azuka Nwigwe*  
Azuka Nwigwe, DPT

KELLY 0138

---

5915 Bldg. A Hollis Street • Emeryville, California 94608 • Tel: 510.923.0700 • Fax: 510.923.0500

## **EXHIBIT 15**



Jun 01 07 10:15a Rlyna

510 845 71

p. 2



**Palo Alto Medical  
Foundation**

A Sutter Health Affiliate

**Fremont Center**

**3200 Kearney Street  
Fremont, CA 94538  
(510) 490-1222  
www.pamf.org**

Megan Kelly  
2009 McGee Ave  
Apt 2  
Berkeley, CA 94703

May 31, 2007

MRN# 15221641

To Whom It May Concern:

Megan Kelly was seen and evaluated in clinic today. She may return to part-time work, which is 20 hours a week, with limited repetitive activities.

If you have any questions, please do not hesitate to call my office at (510) 490-1222.

Sincerely,

Barry A. Rose, M.D.  
Palo Alto Medical Foundation  
Fremont Center

KELLY 0134

## **EXHIBIT 16**

Kelly, Megan (MR # 15221641)

Encounter Date: 04/11/2006

**Encounter Messages**

No Messages in this encounter

Allergies as of  
10/11/2006 (Not on File)**Orders Placed This Encounter****Pended Orders**

\*\* None \*\*

**Patient Instructions History****Patient Instructions Revisions****Status****Date&Time****By User****Administrative Information****IDX Visit Number**  
PA18228496**IDX Visit Type**  
RETURN OFFICE VISIT [644]**Encounter  
Status**

Closed by IFC, PA IDX SCHED on 10/6/06 at 2:05 PM

Scanned Document (PA HIM)

15221641 Kelly, Megan

**Additional Progress Notes:**Scan on: 10/10/06 by: PATIENT CORRESPONDENCE [10001181]  
Scan on: 10/10/06 by: PATIENT CORRESPONDENCE [10001181]**Office Visit**

Megan Kelly (MR# 15221641)

Visit Information	Date	Time	Department	Provider	Encounter #
	10/10/2006	1:45 PM	Fremont Orthopedics	Barry A Rose MD, MD	75205904

**Diagnoses** **Visit Diagnosis**  
PAIN IN LIMB [729.5]**Reason for Visit** **Reason for Visit**  
Follow Up [180]

Comment: R ankle and both wrists

**Reason For Visit History Recorded**

Transcription	Type	ID	Date and Time	Author
	Fmt Clinic Note	5790966	10/11/2006 2:01 PM	ROSE MD, BARRY A.

Dr. Haskell\_0095

Kelly, Megan (MR # 15221641).

Encounter Date: 04/11/2006

This document has not been authenticated

Document Text

Kelly, Megan

152-21-64-1 Home Base:

10/10/2006

Dr. Rose (ORS)

I saw the patient back today. She's been seen for lateral ankle reconstructions which are going to be set up some time in the future. She's also been seen by myself. We reviewed Dr. Basso's notes and her MRIs which show a TFCC tear on the left wrist and a normal MRI on the right wrist, and her EMGs that were done show no EMG abnormalities. I do think she probably will need a diagnostic arthroscopy of the left wrist. She's got bilateral upper extremity symptoms. In fact, she can hardly walk and uses a cane, crutches, etc., and falls on both wrists. She's got a fair amount of pain everywhere in both forearms, but they are actually over the ulnar aspect of both wrists also, especially on the left. So I do think a diagnostic wrist arthroscopy and her TFCC debridement would be reasonable but after her ankles are done. We'll set this up for her sometime in the future but will await Dr. Haskell's reconstructive surgery, and I will reevaluate her again in the near future, and when she's ready, we'll set this up.

Document #: 5790966

T: 10/11/2006 2:01 P/edx

cc:

Display transcription (5790966) on 10/11/2006 2:01 PM by ROSE MD, BARRY A. only

Progress Notes

## Progress Notes

Online EncounterEncounter Messages

No Messages in this encounter

AllergiesAllergies as of  
10/10/2006 (Not on File)Orders Placed This EncounterPended Orders

\*\* None \*\*

Patient Instructions HistoryPatient Instructions Revisions

Status

Date&amp;Time

By User

Level of Service

Level Of  
Service

Level of Service  
OV EST PT LEV-3 [99213]

Administrative Information

IDX Visit Number  
PA18228673

IDX Visit Type  
OFFICE VISIT SHORT [558]

Encounter  
Status

Closed by ROSE MD, BARRY A. on 10/10/06 at 1:54 PM.

Office Visit

Megan Kelly (MR# 15221641)

Dr. Haskell\_0096

## **EXHIBIT 17**

Kelly, Megan (MR # 15221641)

Encounter Date: 04/11/2006

Visit Information	Date	Time	Department	Provider	Encounter #
	09/20/2006	8:45 AM	Palo Alto Orthopedics	Andrew Haskell MD, MD	73088173

**Diagnosis**

**Diagnoses** Visit Diagnoses  
 SPRAIN ANKLE NEC [845.09]  
 ARTHROPATHY NEC-ANKLE [716.87]

**Reason for Visit**

**Reason for Visit** Reason for Visit  
 Preop [739]  
 Comment: discuss right foot surgery

**Transcription**

Transcription	Type	ID	Date and Time	Author
	New PA Clinic Note	5772837	9/21/2006 3:47 PM	HASKELL MD, ANDREW

This document has not been authenticated

Document Text

Kelly, Megan  
 152-21-64-1  
 09/20/2006

Dr. A. Haskell (ORS)

**CHIEF COMPLAINT:** The patient returns for further discussion of her possible upcoming surgery. Recall, she is a 28-year-old woman who had an inversion injury to the right ankle a number of years ago, tripping on a curb. She had immediate swelling. She had numerous interventions, including bracing, anti-inflammatory medications, physical therapy and casting. Nothing has provided lasting relief.

She has had numerous other soft tissue injuries related to this, including bilateral wrist pain and an eye injury from a fall on the unstable ankle. The ankle feels like it will give out on her, even when standing and currently it is her worse orthopedic issue. The pain rates 7/10. It is primarily over the anterior lateral ankle and is sharp.

**PHYSICAL EXAMINATION:** The patient is generally well-appearing, in no acute distress. Stated height and weight, 5'5", 190 pounds. She has a neutral lower extremity alignment and an antalgic gait on the right. She is tender to palpation over the anterior ATFL and anterior lateral gutter, mildly along the peroneals. There is pain with varus stress, which is 2+ with a soft end point. Anterior drawer is 1+ to 2+. The foot is plantigrade. The ankle and hindfoot are supple. Skin is intact. She distally neurovascularly intact. The heel is neutrally aligned. She does have some mild subjective numbness in both feet, which she attributes to her hypothyroid medications, and 4+ DP pulses. No dysesthesias, color or temperature changes in the feet.

**IMAGING:** By her report, x-rays taken outside the clinic were negative. MRI shows an ATFL and CFL tear with mild tenosynovitis of the FHL and posterior tibial tendon.

**ASSESSMENT AND PLAN:** Right ankle chronic instability and anterior lateral impingement, possible peroneal tendinopathy.

I have discussed the nature of this problem with the patient and feels she has maximized conservative therapy. I have once again had a long discussion with her regarding the surgical intervention for this problem, which would consist of an ankle arthroscopy and debridement, followed by lateral ligament repair (modified Broström). I have also discussed with her again that I am concerned with her hyperesthetic response to any injury, and that she may have difficulty with recovery from this type of surgery, though the results typically are quite good. We have discussed various postoperative medications and she has not tolerated Vicodin, Darvocet or Tylenol No. 3. She has Percocet at home, but has never tried them. I have asked her to try one to make sure she tolerates this. Or alternatively, Ultram may be an option. In addition, she does take ibuprofen, which seems to be okay.

She may also be a good candidate for a regional block, and as she is reluctant to

Dr. Haskell\_0097

Kelly, Megan (MR # 15221641)

Encounter Date: 04/1 1/2006

have general anesthesia, I have asked for an anesthesia consult so she could discuss these issues with them before the day of surgery. She is also interested in surgical estimated costs, as she has been on disability and unable to work for a couple of years. We will have my nurse help facilitate all of these arrangements. We will set up the procedure at her convenience.

mt

Document #: 5772837

cc:

Display transcription (5772837) on 9/21/2006 3:47 PM by HASKELL MD, ANDREW only

**Progress Notes**

Progress Notes Pre and postop instructions given.

**Online Encounter****Encounter Messages**

No Messages in this encounter

**Allergies**

Allergies as of  
09/20/2006 (Not on File)

**Orders Placed This Encounter****Pended Orders**

" None "

**Patient Instructions History****Patient Instructions Revisions**

Status

Date&amp;Time

By User

**Level of Service**

Level Of  
Service

Level of Service  
OV EST PT LEV 3 [99213]

**Administrative Information**

IDX Visit Number  
PA18089768

IDX Visit Type  
RETURN OFFICE VISIT [644]

Encounter  
Status

Closed by HASKELL MD, ANDREW on 9/20/06 at 10:06 AM

Scanned Document (PA HIM)

15221641 Kelly, Megan

**Additional Progress Notes:**

Scan on: 9/11/06 by: ROI FORMS FOR RELEASE OF OUR RECORDS [1001176]

**Office Visit**

Megan Kelly (MR# 15221641)

Visit Date

Time

Department

Provider

Encounter #

Dr. Haskell\_0098

## **EXHIBIT 18**





# CLAIMANT'S SUPPLEMENTAL STATEMENT

The Benefits Center  
PO Box 100158  
Columbia, SC 29202-3158  
Phone: 1-800-858-6843 Fax: 1-800-447-2486



0287500078017680

The Claimant is responsible for completion of all portions of this form without expense to the UnumProvident Corporation subsidiaries.

## CLAIMANT'S STATEMENT (PLEASE PRINT)

Your reply by

is appreciated and enables us to provide timely consideration of your claim.

1. Claimant's Name (last, first, middle)  
Kelly, Megan L

Residence Address (Street, City, State, Zip)

2009 McGee #2 Berkeley, CA 94703

Social Security Number  
451-43-3650

Home Phone (510) 845 2636 Cell Phone (510) 845 2636

Mailing Address (if different than residence address) (Street, City, State, Zip)

Business Phone (510) 845 2636

RECEIVED

OCT 28 2007

2. Policy Number(s): 588097

3. Have you been at any of your places of business, or engaged in any work activity for payment, profit, or other compensation during your claimed period of disability? ☐ Yes ☒ No If yes, please give dates, hours worked, duties performed, and indicate how you were compensated.

Did work 9/5/04 - 9/21/04 - did not claim this period for disability

If yes, weekly or monthly earned income before taxes \$

If you have not returned to work, when do you expect to return to work?

Part Time: UNKNOWN

(please provide documentation of earnings)

Full Time: UNKNOWN

What specific job duties are you unable to do as a result of your sickness/injury?

walking, cannot write or type for very long. Tend to drop things w/o realizing cannot grasp them. Cannot drive myself. Loss sight periodically.

4. When was the last date you were treated by or consulted with a medical practitioner?

Name of medical practitioner: Dr. Barry Rose, Dr. Roshan Khandekar, Dr. James Khandekar

5. Describe your present activities:

Attempt to keep things recently cleaned. If someone is staying w/ me, then I can save my wrists and ankles and try for a walk. It is getting w/ me. I try to do light stationary cycling or vertical exercise in a pool. I still use cane because ankles are weak. Other than as described above, have there been any other changes in your daily activities or your condition since your last report? ☐ Yes ☒ No If yes, describe. Loss of sight periodically makes it hard to do what restricted activities I have left. Harder to do the work when hands numb.

6. Does your current condition prevent you from caring for yourself? ☐ Yes ☒ No Does someone provide assistance? ☐ Yes ☒ No

Do you use an assistive device(s)? ☐ Yes ☒ No If yes to any of these questions, please explain.

I have been told not to drive due to problems w/ wrists & ankle. Since then I have also begun having vision problems. I need a driver for doctor's appointments and such. I have problems grasping things, slips and drops have barred me from cooking, dishwashing - I have someone else cook for me so all I have to do is reheat - less chances of hurting myself that way. I use a cane, splints on both wrists, splint on ankle. I have been told not to drive due to problems w/ wrists & ankle. Since then I have also begun having vision problems. I need a driver for doctor's appointments and such. I have problems grasping things, slips and drops have barred me from cooking, dishwashing - I have someone else cook for me so all I have to do is reheat - less chances of hurting myself that way. I use a cane, splints on both wrists, splint on ankle.

7. Have you applied for or begun to receive any other Disability, Workers' Compensation, Unemployment, Social Security, Retirement, or Pension benefits? ☐ Yes ☒ No If yes, please provide us with detailed information for each benefit in the space provided below. Please also report any changes to previously reported benefits.

Source of Income:	Name of Insurance Carrier (if applicable)	Policy or ID No.	Benefit Amount Weekly/Monthly	Date claim was filed	Date payments began	Date payments ended
Disability Pay	UNUM Provident		you have all this information			

8. Are you currently employed by another employer? If yes, please submit a copy of Award or Denial letter(s). I have read and understand the fraud notices on page 3 of this form. The above statements are true and complete to the best of my knowledge and belief. (Your signature is required for benefit consideration.)

Signature

1358-99-SC (10/05)

Date

10/19/06

Confidential. Do NOT share. If misdirected please call 510 845 2636 & then share d

Claimant Name: Megan L Kelly Claim # 1718010

UNUMPROVIDENT

## CLAIMANT'S SUPPLEMENTAL STATEMENT

The Benefits Center  
PO Box 100158  
Columbia, SC 29202-3158  
Phone: 1-800-858-8843 Fax: 1-800-447-2498



02875000780176802

## CLAIMANT'S STATEMENT -- Physician/Medication List (PLEASE PRINT)

To avoid delay please answer all questions as completely as possible. Please attach additional pages if needed.

Claimant's Full Name

Kelly, Megan L

Policy No.

588097

Please list ALL treatment providers with whom you are currently treating.

1) <u>Dr. James Perse</u> Provider Name <u>Ophthalmology</u> Specialty Frequency of Treatment	<u>805 Veterans Blvd, Ste 125 Redwood City (CA) 94063</u> Mailing Address <u>CA</u> City State Zip <u>10/12/06</u> Date of Last Visit	<u>(650) 368 3904</u> Telephone No. <u>(650) 368 0230</u> Fax No.
2) <u>Dr. Andrew Haskell</u> Provider Name <u>Orthopedic - ankle specialty</u> Specialty Frequency of Treatment	<u>Palo Alto</u> Mailing Address <u>CA</u> City State Zip <u>10/12/06</u> Date of Last Visit	<u>(650) 321 4121</u> Telephone No. ( ) Fax No.
3) <u>Dr. Barry Rose</u> Provider Name <u>Orthopedic - wrists</u> Specialty <u>waiting til after ankle surgery</u> <u>so can do wrist surgery</u> Frequency of Treatment	<u>Fremont</u> Mailing Address <u>CA</u> City State Zip <u>10/10/06</u> Date of Last Visit	<u>510 490 1222</u> Telephone No. ( ) Fax No.

*see extra page - Susan Volk (ph); [unclear]*

Please list any recent hospital confinements.

PLANNED OUTPATIENT SURGERY		
1) <u>Palo Alto SurgeCenter</u> Hospital <u>Ankle + Ligament</u> <u>Arthroscopy + Repair</u> Procedure	<u>Palo Alto</u> Address <u>CA</u> City State Zip	<u>11/03/06</u> Dates of Confinement
2) _____ Hospital	_____ Address	_____ Dates of Confinement
_____ Procedure	_____ City State Zip	

Please list all current medications.

Prescription Name	Dosage	Prescribing Physician
1) <u>Methimazole</u>	<u>12 1/2 mg/day</u>	<u>Dr. Michael Connor; endocrinologist</u>
2) <u>metformin XR (NOT Diabetic)</u>	<u>1500mg</u>	<u>Dr. Mary Davenport, OB-GYN</u>
3) _____	_____	_____
4) _____	_____	_____
5) _____	_____	_____
6) _____	_____	_____
7) _____	_____	_____
8) _____	_____	_____
9) _____	_____	_____

1589-09-SC (10/05)

CONFIDENTIAL  
Claimant Name: Megan L Kelly

Claim #: 1718010

Unum\_0627